

STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

(FILED: December 19, 2022)

NICHOLAS AND PAMELA GELSOMINI

*Appellants,*

v.

KATE BUTCHER, SUSAN BUSH, KEITH  
STOVER, ROBERT CLOSTER, JR., AND  
STEVEN FILIPPI, in their capacities as  
Members of the Town of New Shoreham  
Zoning Board of Review,  
*Appellees.*

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C.A. No. WC-2021-0313

**DECISION**

**TAFT-CARTER, J.** Before the Court for decision is the appeal of Nicholas and Pamela Gelsomini (Appellants) from the July 2, 2021 written decision (the Decision) of the Town of New Shoreham Zoning Board of Review (the Zoning Board) denying Appellants' application for a special use permit. Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

**I**

**Facts and Travel**

Appellants currently own 617 Off Corn Neck Road in New Shoreham, Rhode Island (the Property). (Zoning Appl. (Appl.) at 1.<sup>1</sup>) The Property is in a residential A zone (RA Zone) and is approximately 262,420 square feet in size, of which, 186,480 square feet is developable land. *Id.* Appellants wanted to demolish their current 809 square foot house and build a 4,143 square foot single-family dwelling (the House), a 1,792 square foot accessory residential structure (the

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<sup>1</sup> Documents in the Certified Records are not marked as enumerated exhibits and will be identified in this Decision by the document titles listed in the Certification of Records followed by a page number where appropriate. The Application is not paginated but is short enough in length that the pin cites provided should be readily ascertainable.

Accessory Structure), a 462 square foot inground pool, and a 64 square foot spa on the Property (collectively, the Proposal). *Id.* at 2.

Pursuant to §§ 306(E) and 406 of the New Shoreham Zoning Ordinances (NSZO), a special use permit is required for residential structures in the RA Zone that exceed a building footprint of 2,000 square feet, a living area of 3,300 square feet, a gross area of 5,000 square feet, or a building volume of 45,000 cubic feet. (Decision ¶ 3); *see also* NSZO § 406(B). Appellants' proposed design for the House included a building footprint of 4,143 square feet, a living area of 4,808 square feet, a gross area of 7,904 square feet, and a building volume of 69,915 cubic feet. (Decision ¶ 3.) Due to the proposed design of the House, Appellants were required to apply for a special use permit. (Appl. at 5); *see also* NSZO § 406(B). On January 26, 2021, Appellants submitted their third amended application for a special use permit (the Application) to the Zoning Board. *Id.*

In New Shoreham, applications for a special use permit are subject to a “[d]evelopment [p]lan [r]eview” by the Planning Board of New Shoreham (Planning Board). *See* NSZO § 406(B)(5). The Application was reviewed by the Planning Board, and on April 29, 2021, the Planning Board issued an unfavorable advisory opinion and recommended that the Zoning Board deny the Application. (Planning Board Advisory (Advisory) at 1.) First, the Planning Board determined that the Proposal is inconsistent with New Shoreham's comprehensive plan and the purpose of § 406 of the NSZO because the Proposal will be “visually intrusive, is in conflict with the traditional New Shoreham development patterns, and will have a negative impact on coastal wetlands of the Great Salt Pond[.]” *Id.* at 3. Second, the Planning Board determined that the Application did not adequately address the Planning Board's concerns about emergency vehicles' ability to access the Property, raised significant concerns about the Proposal's impact on coastal features, and the Proposal did not adequately consider or explain how it would impact freshwater

supply. *Id.* at 3-4. Third, the Planning Board determined that the Application did not meet all the relevant standards of § 501 of the NSZO because the Proposal was not designed to minimize any visual impacts of the development and the size of the Proposal did not minimize the impact on natural resources. *Id.* at 4.

On May 26, 2021, the Zoning Board held a remote hearing on the Application (the Hearing). (Compl. ¶ 11<sup>2</sup>); *see also* Gelsomini Tr. May 26, 2021 (Tr.) at 1. During the Hearing, the Zoning Board heard from Appellant, Pamela Gelsomini, who testified to the current landscape of the Property, the designs of the Proposal, and gave a summary of who Appellants engaged with when creating the Proposal. (Tr. at 8:16-17:8.) The Zoning Board also heard from Joseph McCue, Ray Maiello, Ken Cole, Gregory Yalanis and Peter Scotti. *See generally* Tr. at 18-81. Joseph McCue is a professional wetlands scientist and testified that the wetlands on the Property had been reviewed and verified by the Coastal Resource Management Council (CRMC). *Id.* at 18:7-26:6. Ray Maiello is a landscape architect who worked on the construction plans for the Proposal and testified to the revisions made to the Proposal in response to CRMC's preliminary determination. *Id.* at 26:24-35:5. Ken Cole is the project manager at Atlas Land Surveying who developed the site plans for the Proposal and testified to the wastewater treatment design for the Proposal. *Id.* at 35:15-55:4. Gregory Yalanis is an architect who designed the Proposal for Appellants and testified to the specific designs of the Proposal in relation to the Property. *Id.* at 55:12-74:8. Peter Scotti is a real estate broker and general appraiser who regularly works in New Shoreham and testified to his review of the Proposal and that he believes the Proposal is well suited for the Property and is compatible with the surrounding area. *Id.* at 75:4-81:14.

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<sup>2</sup> The Complaint is not paginated but is short enough in length that the pin cites provided should be readily ascertainable.

After the witnesses finished testifying, the Zoning Board reviewed the requirements of § 406 of the NSZO and explained that the Zoning Board is required “to pay really close attention” to the requirements of §§ 406(G), 401(A)(1), and 401(A)(2) of the NSZO. *Id.* at 81:18-23. The Zoning Board also expressed concern about whether the Proposal is “compatible with adjacent buildings in form, placement and design” because the House is twice the size of the houses on the abutting properties. *Id.* at 81:25-82:4. Additionally, the Zoning Board was unsure if the Proposal was appropriate for the specific site—i.e., the Property—selected by Appellants. *Id.* at 82:14-17.

Next, the Zoning Board explained the criteria for a special use permit. Specifically, the Zoning Board explained that special use permits are not the same as variances because there is no requirement that there be adverse hardship. *Id.* at 83:18-20. Instead, the Zoning Board explained that a special use permit deals with a proposal’s impact on the surrounding area. *Id.* at 83:20-22. Furthermore, the Zoning Board explained that the general criteria for a special use permit is found in § 401 of the NSZO but there are additional criteria in various sections of the NSZO including §§ 501(b) and 514. *Id.* at 82:23-85:23. Lastly, the Zoning Board explained that it is “free to consider whatever it wishes to consider” and may “place weight wherever it feels it’s most important.” *Id.* at 86:5-20.

Next, the Zoning Board discussed the unfavorable advisories of the Planning Board and the Conservation Commission. *Id.* at 92. First, the Zoning Board explained that the Conservation Commission’s concerns were that the Property is located within the CRMC buffer zone and whether emergency vehicles’ access will be impeded. *Id.* at 92:7-12. Second, the Zoning Board gave the Planning Board’s concerns close attention including the Planning Board’s concerns about development in the Great Salt Pond area, that the Planning Board believed the Proposal is

inconsistent with New Shoreham's Comprehensive Plan, the impact to emergency vehicles' ability to access the Property, and the Proposal's consumption of water. *Id.* at 92:13-93:23.

Following this discussion, the Zoning Board reviewed the letters it received from the Property's neighbors that raised concerns regarding the sensitivity and visibility of the Property based on its closeness to Great Salt Pond, the likelihood of light pollution, and the height of the House obstructing the views of Great Salt Pond. *Id.* at 94:3-11.

Next, the Zoning Board allowed public comment, at which time a neighbor raised concern over the Proposal's water usage and the likelihood of increased traffic which would impact the quietness of the neighborhood. *Id.* at 95:12-96:6. Public comments closed, and the Application was taken under advisement by the Zoning Board. *Id.* at 97:22-98:10.

On June 23, 2021, the Zoning Board voted 5-0 to deny the Application and issued its written Decision on July 2, 2021. (Decision at 1.) First, the Zoning Board found that the House is close to the maximum building footprint and living area the Zoning Board could grant for any residential property in New Shoreham and, in viewing the totality of the circumstances, the Property and the Proposal are "poor candidates" for granting a special use permit. (Decision ¶ 4.) Second, the Zoning Board found that the Application failed to meet the standards of §§ 401(A)(1) and 401(A)(2) of the NSZO because "[t]he proposed structures are not 'visually and dimensionally compatible with the surrounding area'" because the House is substantially larger than the abutting properties to the south and east of the Property. *Id.* ¶ 5. Third, the Zoning Board found that the Proposal will "not serve the purposes of [§] 406 nor complement the island's natural and scenic character" due to the size of the Proposal because it is in a "highly visible location" on Great Salt Pond and, as such, it will be visible from the entire Great Salt Pond area. *Id.* ¶ 8.

On July 19, 2021, Appellants filed a Complaint, pursuant to § 45-24-69, asking this Court to reverse the Decision of the Zoning Board and grant their Application for a special use permit. (Compl. at 5.) The Zoning Board filed its Answer on August 11, 2021. *See* Docket.

Following a hearing on January 6, 2022, the Court entered an Order for the filing of the Administrative Record and appellate briefing by both parties. *See* Order, Jan. 24, 2022 (Taft-Carter, J.). Appellants filed their Brief on May 24, 2022. *See* Docket. The Zoning Board filed its Brief on August 31, 2022. *Id.* Thereafter, Appellants filed their Reply Brief on September 29, 2022. *Id.*

## II

### Standard of Review

The Superior Court’s review of zoning board decisions is governed by § 45-24-69(d), which provides:

“The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

- “(1) In violation of constitutional, statutory, or ordinance provisions;
- “(2) In excess of the authority granted to the zoning board of review by statute or ordinance;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
- “(6) Arbitrary or capricious or characterized by abused of discretion or clearly unwarranted exercise of discretion.” Section 45-24-69(d).

The Court must “‘examine the whole record to determine whether the findings of the zoning board were supported by substantial evidence.’” *Lloyd v. Zoning Board of Review for City of Newport*, 62 A.3d 1078, 1083 (R.I. 2013) (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 507,

388 A.2d 821, 824 (1978)). “Substantial evidence is defined as ‘such relevant evidence that a reasonable mind might accept as adequate to support a conclusion[] and means [an] amount more than a scintilla but less than a preponderance.’” *Iadevaia v. Town of Scituate Zoning Board of Review*, 80 A.3d 864, 870 (R.I. 2013) (quoting *Pawtucket Transfer Operations, LLC v. City of Pawtucket*, 944 A.2d 855, 859 (R.I. 2008)). If the Court finds that the zoning “board’s decision was supported by substantial evidence in the whole record[,]” then the zoning board’s decision must stand. *Lloyd*, 62 A.3d at 1083. If the decision of the board does not contain sufficient findings of fact and conclusions of law to permit judicial review, the Court will remand the matter to the board so that the board may issue a ruling that is complete and susceptible to judicial review. *See Irish Partnership v. Rommel*, 518 A.2d 356, 359 (R.I. 1986).

### III

#### Analysis

The Zoning Enabling Act, set forth in chapter 24 of title 45 of the General Laws, mandates that local zoning ordinances “shall provide for the issuance of special-use permits approved by the zoning board of review[.]” Section 45-24-42(a). Oftentimes, a special use permit “relates to a specific use the owner wishes to undertake on the parcel—a use that is not allowed under the ordinance absent zoning board approval.” *Lloyd*, 62 A.3d at 1085; *see also* § 45-24-31(62) (defining “[s]pecial use” as “[a] regulated use that is permitted pursuant to the special-use permit issued by the authorized governmental entity, pursuant to § 45-24-42”). When applying for a special use permit, the applicant must establish that the project will be “in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the city or town[.]” Section 45-24-42(b)(3).

The NSZO permits the Zoning Board to issue a special use permit only if certain criteria are met to the Zoning Board's satisfaction. Section 306(E) of the NSZO lists the permitted uses in an RA Zone with a special use permit. NSZO § 306(E). Specifically, § 306(E) of the NSZO requires a special use permit for a single-family dwelling, accessory residential structure, or accessory structure that exceeds any of the following thresholds:

- “1. An individual building footprint in excess of 2,000 square feet, exclusive of ground level or first floor decks or one story unenclosed porches...;
- “2. A total living area in excess of 3,300 square feet...;
- “3. A total gross area in excess of 5,000 square feet, exclusive of ground level or first floor decks or one story unenclosed porches...;
- “4. A total building volume in excess of 45,000 cubic feet...; and/or
- “5. Any retaining wall constructed of concrete, metal, fiberglass or other similar manufactured material that is in excess of five feet in height and/or fifteen feet in length, exclusive of a retaining wall associated with a walk- out basement.” *Id.*

Furthermore, § 406(B) of the NSZO lists the same criteria as § 306(E), except there is an additional consideration: an application for special use permit is subject to review by the Planning Board. NSZO § 406(B)(5). Additionally, § 406(G) of the NSZO requires the Zoning Board to find that an application for a special use permit “meets the general criteria...[of] § 401, particularly those described in paragraphs A.(1) and (2)[]” as well as the following criteria:

- “1. The construction of the residential structure does not require a variance for any dimensional standard including lot building coverage, lot coverage or building height, with the exception of a variance for a yard setback as recommended by the Planning Board to provide for more appropriate siting of the structure on the lot.
- “2. All performance standards contained in § 514,<sup>[3]</sup> Residential Structures, in the RA and RB Zones, are met.
- “3. A structure with a building footprint greater than 3,000 square feet in area, exclusive of ground level or first floor deck, or one story unenclosed porch, is mitigated as follows:
  - “a. The height of the entire building does not exceed 25 feet,
  - or

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<sup>3</sup> Section 514 of the NSZO was amended on August 2, 2021 by Ordinance Number 2021-08. *See* NSZO § 514.



“b. The footprint is broken up by use of one or more wings or ellis connected to the main building footprint by a common dimension not to exceed 20 feet in length....

“4. Any elevated deck above the first floor is anchored so that there are at least two walls of the building bordering the deck. In no case shall the total area of an elevated deck exceed 1,200 SF.” NSZO § 406(G).

Section 401(A) of the NSZO prohibits the Zoning Board from issuing a special use permit unless the following criteria has been met by the applicant:

“1. The proposed use or structure is appropriate for the specific site and is compatible with adjacent buildings in form, placement and design. The design and layout of buildings and other proposed structures shall be related harmoniously to the terrain and to existing buildings in the vicinity. The scale, height, bulk and proportions of the proposed buildings, their design, including roof style, facade openings, architectural style and detailing and building materials, shall be visually and dimensionally compatible with the surrounding area.

“2. The proposed use as developed will not adversely affect the established physical and visual pattern of land use and will not have negative effects on Island and neighborhood character. The landscape shall be developed in such a manner as to be in keeping with the character of the surrounding neighborhoods and in accordance with good development practice by minimizing vegetation and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas. If a site includes a ridge or ridges above the surrounding areas and provides scenic vistas for surrounding areas, special attempts shall be made to preserve the natural environment of the skyline of the ridge.

“3. The proposed use or structure will not cause a nuisance or serious hazard to pedestrians or landward and seaward vehicles and their users.

“4. Adequate and appropriate infrastructure facilities, including but not limited to sewage disposal and drainage, will be provided to assure the proper operation of the proposed use or structure.

“5. There will not be significant negative impact on important natural resources, including but not limited to habitats or species listed as endangered, threatened or of special concern to the Rhode Island Natural Heritage Program, or on historic or archeological resources identified in the Comprehensive Plan or a document referenced therein.

“6. If involving employment, the use will be supportive of the goals and objectives for economic development in the Economic

Development element of the New Shoreham Comprehensive Plan, as most recently amended.

“7. The use is consistent with the purpose of this Zoning Ordinance, the purpose of the zoning district in which the use is proposed, and the goals and objectives of New Shoreham’s Comprehensive Plan, as amended, the Old Harbor Plan, as amended, or any other adopted Town Plan.

“8. To the degree reasonably possible, dependency on individual motor vehicles for access by users shall be reduced through site selection (e.g. relatively central, or proximate to users), development design and facilities (e.g. good pedestrian and bicycle provisions, site arrangement facilitating shuttle buses or other auto alternatives, on-site mixture of uses), and proposed operations (e.g. provision of employee transportation).

“9. The proposed uses and structures will not cause a degradation of the quality of surface or groundwater.” NSZO § 401(A)(1)-(9).

In the present case, Appellants contend that the Zoning Board’s Decision was clearly erroneous in the absence of substantial evidence in the record to support the Zoning Board’s decision to deny the Application for a special use permit. *See generally* Br. of Nick Gelsomini and Pamela Gelsomini (Appellants’ Br.). Specifically, Appellants argue that the Application met all the requirements of §§ 306(E), 406(G), 514, and 401(A) and it was clear error for the Zoning Board to deny their Application. *See id.* at 14-24. In addition, Appellants aver that the Zoning Board’s Decision is clearly erroneous because it is extraordinarily subjective and based entirely on the Planning Board’s Advisory Opinion. *Id.* at 24-34. For the reasons to follow, the Court disagrees.

## A

### **Sections 306(E) and 406(G) of the NSZO**

Appellants first contend that the Application addressed and satisfied all the requirements of §§ 306(E) and 406(G) of the NSZO and that is why the Zoning Board failed to explain in its Decision how the Application did not meet the requirements of §§ 306(E) and 406(G) of the NSZO. (Appellants’ Br. at 16.) In support, Appellants argue that the Application complies with all requirements of §§ 306(E) and 406(G) of the NSZO including the building lot coverage limits,

building height limits, and the minimum lot size to build requirements. *Id.* at 17-18. Moreover, Appellants contend that although the House has a footprint of 4,143 square feet (which exceeds the 3,000 square feet permitted by § 406(G)) and is thirty-two feet high (which exceeds the twenty-five feet permitted by § 406(G)), the design of the House includes a subordinate wing which comports with § 406(G)(3)(b) of the NSZO. *Id.* at 18.

The record clearly reflects that the Zoning Board did consider and explain whether the Application met the requirements of §§ 306(E) and 406 of the NSZO. First, the Zoning Board determined that “[t]he principal structure [i.e., the House] exceeds the ‘by right’ maximum square cubic footage(s) allowed under Sections 306([E]) and 406 in almost every category.” (Decision ¶ 3.) Specifically, the Zoning Board explained that the House’s footprint is more than twice the by right maximum, the living area of the House is almost one and one-half times larger than the by right maximum, the gross area of the House is 58 percent greater than the by right maximum, and the House’s volume is 55 percent greater than the by right maximum. *Id.* Moreover, the scale of the House was a significant concern of the Zoning Board when discussing whether the Application had met the criteria of § 406(G). (Tr. at 81:20-82:24.)

Second, the Zoning Board explained that while it has the authority to grant a special use permit, the Application was close to the maximum relief the Zoning Board could possibly grant. (Decision ¶ 4.) The Zoning Board explained that the maximum relief that could be granted for any residential property in the RA Zone pursuant to §§ 306(E) and 406(G) is a building footprint of 5,000 square feet and a building volume of 80,000 cubic feet. *Id.* The Proposal included the House which had a building footprint of 4,143 square feet and a building volume of 69,915 cubic feet. *Id.*; see also NSZO § 111(A)(5) (listing the prohibited uses for residential structures in the RA Zone). In viewing the totality of the circumstances, the Zoning Board found that the

Application was a “poor candidate[]” for a special use permit because it was approaching the maximum relief that the Zoning Board could grant under §§ 306(E) and 406(G) for any property on Block Island. *Id.*

Third, the Zoning Board explained that the intent of § 406 of the NSZO is “to ensure that new residential development is designed and sited in a way that complements, and does not detract from, the island’s natural, historic, cultural, and scenic character, the preservation of which is to the benefit of all residents and visitors.” (Decision ¶ 7.) Consequently, the Zoning Board determined that a development of the size proposed by Appellants and in the location proposed by Appellants will not serve the purpose of § 406 nor complement the unique island character. *Id.* ¶ 8. In making this determination, the Zoning Board gave the Planning Board’s opinion considerable weight and expressed serious concern that the size, scale, and bulk of the House would be seen from the entire Great Salt Pond area including anyone entering Great Salt Pond through the channel. *Id.*; *see also* Tr. at 88.

The Zoning Board’s consideration and discussion of whether the Application met the requirements of §§ 306(E) and 406(G) of the NSZO serves as substantial evidence that supports the Zoning Board’s Decision to deny the Application.

## **B**

### **Section 514 of the NSZO**

Appellants next argue that the Application conforms to the requirements of § 514 of the NSZO, as required by § 406(G) of the NSZO, but the Zoning Board ignored Appellants’ care and specific designs of the Proposal to conform with § 514 and is therefore not a sufficient reason to deny the Application. (Appellants’ Br. at 11-15.) In support, Appellants submit that the only aspect of the Application that triggered the requirement for a special use permit was the size of the House;

however, the House was designed “with regard to its setting and is not visually intrusive and in conflict with traditional New Shoreham development patterns that are critical to the unique island character” thus conforming to § 514 of the NSZO. (Reply Br. of Pls./Appellants Nicholas Gelsomini and Pamela Gelsomini (Appellants’ Reply Br.) at 11-14.) Furthermore, Appellants argue that the Zoning Board provided no analysis concerning the House’s failure to comply with the standards of § 514 of the NSZO. *Id.*

The requirements that an application for a special use permit complies with § 514 of the NSZO is merely one criterion enumerated in § 406 of the NSZO. *See* NSZO § 406(G). Section 406(G) of the NSZO sets forth the items the Zoning Board must consider when determining whether to grant an application for special use permit. *Id.* In pertinent part, § 406(G) requires that the Zoning Board “determine that the application meets the general criteria...[of] § 401, particularly those described in paragraphs A.(1) and (2)[,]” and four additional criteria. *Id.* An application for a special use permit must meet “[a]ll performance standards contained in § 514, Residential Structures, in the RA and RB Zones[.]” *Id.* Accordingly, whether an application meets the requirements of § 514 of the NSZO is just one of the many requirements that the Zoning Board must consider when deciding whether to grant or deny an application for a special use permit.

Therefore, the issue of whether the Application met the requirements of § 514 of the NSZO is not dispositive of whether the Zoning Board’s Decision is supported by substantial evidence.

## **C**

### **Section 401 of the NSZO**

Lastly, Appellants argue that the Application satisfies all of the requirements of § 401 of the NSZO, and that the Zoning Board focused its decision on the most subjective standards set forth in §§ 401(A)(1) and 401(A)(2) of the NSZO to deny the Application. (Appellants’ Br. at 19.)

In support, Appellants argue that the Zoning Board relied upon its own belief that the House is too big for the Property. *Id.* Additionally, Appellants argue that the Application addresses and satisfies each of the nine requirements of § 401(A) of the NSZO. *Id.* at 19-24. Conversely, the Zoning Board argues that according to the language of § 401 of the NSZO, the burden is upon the applicant—i.e., the Appellants—to provide an application that meets the standards of § 401. (Br. of Defs./Appellees, Kate Butcher, Susan Bush, Keith Stover, Robert Closter, Jr., and Steven Fllippi [*sic*] in their Capacities as Members of the Town of New Shoreham Zoning Board of Review at 28.)

Here, the record clearly indicates the reasoning of the Zoning Board as to why the Application failed to meet the requirements of § 401 of the NSZO. In its Decision, the Zoning Board explained that an application for a special use permit cannot be approved unless all of the standards of § 401 of the NSZO have been met and the Zoning Board must pay particular attention to subsections (A)(1) and (A)(2) in accordance with the language of § 406 of the NSZO. (Decision ¶ 5); *see also* NSZO § 406(G). During the Hearing, the Zoning Board explained that it was having difficulty finding that the Application satisfied the requirements of §§ 401(A)(1) and (A)(2) because it was unsure of whether the Proposal would be compatible with the adjacent buildings due to the House being significantly larger than the houses on the abutting properties. (Tr. at 81:24-82:4.) Moreover, the Zoning Board explained that the size of the lot is not what the Zoning Board must consider in determining whether an application meets the requirements of § 401(A) of the NSZO: instead, the Zoning Board must consider whether the Proposal is appropriate for the specific site selected (i.e., the Property). *Id.* at 82:12-15.

Additionally, the Zoning Board gave considerable weight to the unfavorable Advisory opinion issued by the Planning Board. (Decision ¶ 6.) The Zoning Board characterized the

Planning Board’s Advisory opinion as a “rare and pointed recommendation of disapproval of the proposal in its current form[.]” *Id.* Based on the information presented in the Planning Board’s Advisory opinion, the Zoning Board determined that the Application failed to meet the criteria of §§ 401(A)(1) and (A)(2) of the NSZO. *See id.*

Moreover, the Zoning Board’s difficulty with determining whether the Application met the criteria of §§ 401(A)(1) and (A)(2) of the NSZO was reflected in its Decision. In the Decision, the Zoning Board explained that the core focus of the special use permit criteria is “on the size of the *residential structure* in relation to other *residential structures* as opposed to comparative lot sizes and, more specifically the structure’s harmony (or lack thereof) with other residential structures ‘in the vicinity.’” (Decision ¶ 9 (citing NSZO § 401(A)(1)).) Moreover, the Zoning Board acknowledged that while the size of the Property and overall lot coverage listed in the Proposal “compared favorably to other lots on the Great Salt Pond[.]” the data relied upon by Appellants involved properties that were more remotely situated than Appellants’ Property. *Id.* Consequently, the Zoning Board determined that the Application did not meet the requirements of § 401 of the NSZO because “[t]he proposed structures are not ‘visually and dimensionally compatible with the surrounding area[.]’” because of the House’s size and location of the Property in relation to Great Salt Pond and the impact the Proposal will have on the surrounding area. *See id.* ¶ 5.

The Zoning Board’s consideration and explanation of whether the Application met the requirements of §§ 401(A)(1) and (A)(2) of the NSZO serves as substantial evidence that supports the Zoning Board’s Decision to deny the Application.

## **IV**

### **Conclusion**

After review of the entire record, this Court finds that the Zoning Board's Decision to deny the Application is supported by substantial evidence in the record. This Court therefore affirms the Decision of the Zoning Board. Counsel shall submit an appropriate order.





**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** Nicholas and Pamela Gelsomini v. Kate Butcher, et al.

**CASE NO:** WC-2021--0313

**COURT:** Washington County Superior Court

**DATE DECISION FILED:** December 19, 2022

**JUSTICE/MAGISTRATE:** Taft-Carter, J.

**ATTORNEYS:**

**For Plaintiff:** Joseph A. Priestley, Jr., Esq.

**For Defendant:** Christopher J. O'Connor, Esq.  
William Landry, Esq,